IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4651 of 1995

With

SPECIAL CIVIL APPLICATION No. 4663 of 1995

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GAJRABEN WD/O MOHANBHAI SOMABHAI GOHEL & 9 - Petitioner(s)
Versus
THE STATE OF GUJARAT & 42 - Respondent(s)

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Appearance :

MR AJ PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3 - 9, 9.2.1, 9.2.2,9.2.3 - 10, 10.2.1,10.2.2
MS MINI NAIR, AGP for Respondent(s) : 1,
MR YATIN SONI for Respondent(s) : 2,
MR JAYESH M PATEL for Respondent(s) : 3 - 43.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 25/09/2007

COMMON ORAL JUDGMENT

The petitioners before this Court are the successors-in-title of one Somabhai Vaghabhai Gohel, the tenant in the lands bearing Survey Nos.1581/A and 1581/B admeasuring 1-Acre-27-Gunthas in aggregate situated at Anand. The petitioners claim that their ancestor the aforesaid Somabhai Vaghabhai and his predecessor one Motibhai Vaghabhai were the tenants in the disputed lands for more than 80 years. The petitioners' predecessors had inherited the right to tenancy and, being in possession of the disputed lands on tillers' day i.e. 13th December, 1960, had become entitled to purchase the disputed lands. Accordingly, they purchased the disputed lands as envisaged by Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1947 (hereinafter referred to as, **"the Tenancy Act"**). They paid the land revenue and have also paid the betterment charges to the Anand Municipality. The petitioners challenge the common judgment and order dated 29th April, 1995 made by the State Government (Deputy Secretary to the Government of Gujarat (Appeals), Revenue Department) in Revision Applications Nos.1/1992, 24/1992 and 23/1993.

The petitioners have produced copies of the village forms no.7/12 to show that their ancestor one Moti Vagha was cultivating the disputed lands as a tenant since 1930. After the death of the said Moti Vagha, the predecessor-in-title of the petitioners, the aforesaid Somabhai Vaghabhai cultivated the said lands and since the death of the said Somabhai Vaghabhai, his sons Mohanbhai Somabhai and Becharbhai Somabhai came in possession of the disputed lands and continued to cultivate the disputed lands.

It appears that after the death of the said Somabhai Vaghabhai, there were some disputes amongst his sons Mohanbhai Somabhai and Becharbhai Somabhai in respect of the inheritance of the tenancy rights in the disputed lands. I am informed that now the disputes have been resolved amongst the heirs of the said Somabhai Vaghabhai. Pursuant to the claim lodged by the aforesaid Mohanbhai Somabhai and Becharbhai Somabhai, by order dated 24th August, 1981 made by the Mamlatdar and ALT, Anand in Tenancy Case, the said Mohanbhai Somabhai and Becharbhai Somabhai were declared to be the tenants in the disputed lands, entitled to purchase the same under Section 32 of the

Tenancy Act. The price of the land was fixed at Rs.1570=80 as envisaged by Section 32G of the Tenancy Act. Accordingly, the said Mohanbhai Somabhai and Becharbhai Somabhai paid the purchase price and obtained a sale certificate as envisaged by Section 32M of the Tenancy Act. In the said proceeding, the Mamlatdar and ALT noted that in similar cases of the lands of Anand, the lands in question were sold to the concerned tenants. The owner of the disputed lands did not dispute that the aforesaid Somabhai Vaghabhai was the tenant in the disputed lands. The Mamlatdar and ALT was, therefore, pleased to hold that on the death of the said Somabhai Vaghabhai, his sons Mohanbhai Somabhai and Becharbhai Somabhai had right to inherit the tenancy. The Mamlatdar and ALT also observed that the disputed lands were situated within the municipal limit of Anand. Tillers' day for the purpose of the Tenancy Act was 13th December, 1960. On 13th December, 1960, the disputed lands were in possession of the tenant. The tenant was, therefore, entitled to purchase the said lands as envisaged by Section 32(1) of the Tenancy Act. The Mamlatdar and ALT accordingly assessed the price of the land and declared that the said Mohanbhai Somabhai and Becharbhai Somabhai had right to

purchase the land on payment of the purchase price. On payment of the purchase price, the sale certificate as envisaged by Section 32M of the Tenancy Act came to be issued in favour of the said Mohanbhai Somabhai and Becharbhai Somabhai.

Feeling aggrieved, the respondent no.2 – landlord (hereinafter referred to as, **"the Watandar"**) preferred Tenancy Appeal No.3898/1982 before the Deputy Collector. The aforesaid Becharbhai Somabhai also preferred Appeal No.3882/1982 in so far as his brother Mohanbhai Somabhai also was declared to be a tenant entitled to purchase the disputed lands. Both these appeals were partly allowed by order dated 22nd March, 1983. The Deputy Collector observed that the Watandar had agreed that Somabhai Vaghabhai was the tenant in the disputed lands but he asserted that the lands were cultivated by the Watandar and not by the tenant. The Deputy Collector, however, was pleased to set-aside the order and remand the matter on the ground that all concerned were not given notice of hearing. The Deputy Collector also recorded certain issues on which the decision by the Mamlatdar and ALT was solicited. The said order was challenged before the Gujarat Revenue Tribunal. The said challenge

failed as, on 16th January, 1987 the Tribunal dismissed the revision application for want of prosecution. I am informed that the said order has become final.

In the proceedings under the Bombay Inferior Village Watans Abolition Act, 1958 (hereinafter referred to as, **"the Act of 1958"**), the Mamlatdar, Anand, under his order dated 14th June, 1968, held that the disputed lands were Watan lands and were resumed by the State Government under Section 4 of the Act of 1958. The possession by the tenants was unauthorised. Consequently, the disputed lands and such other lands were put for sale by public auction. In Appeal No.252/1969 before the State Government, by order dated 27th May, 1971, public advertisement for sale by public auction was set-aside. The matter was remanded for decision in respect of the status of the appellant under the Act of 1958.

By order dated 26th November, 1990 made under the Act of 1958 by the District Collector, Kheda, the aforesaid Mohanbhai Somabhai and Becharbhai Somabhai were held to be the tenants in the disputed lands. Feeling aggrieved by the said order, the Watandar

preferred appeal before the State Government. By order dated 3rd December, 1991 the above referred order dated 26th November, 1990 was set-aside and the matter was remanded for hearing and decision afresh whether the aforesaid Somabhai Vaghabhai was a lawful tenant in the disputed lands. Pursuant to the said order, the District Collector, Kheda, by his order dated 24th August, 1992, held that the aforesaid Somabhai Vaghabhai was in unauthorised occupation of the disputed lands and that the lands having been resumed by the State Government, the occupants be summarily evicted. The said order has been confirmed by the State Government by the impugned judgment and order dated 29th April, 1995, made in Revision Applications Nos.24/1992 and 23/1993 preferred before it. Feeling aggrieved, the petitioners, the successors-in-title of the tenant, have preferred the present petitions.

Pending the above referred proceedings, pursuant to the order dated 26th November, 1990, by order dated 29th October, 1991 made by the District Collector, Kheda, the petitioners were granted permission for N.A. use of the disputed lands. However, in view of the above referred order dated 24th August, 1992 made

by the District Collector, Kheda in respect of the petitioners' status under the Act of 1958, the aforesaid permission dated 29th October, 1991 came to be cancelled by the order dated 6th October, 1992. The said order was challenged by the petitioners before the State Government in Revision Application No.1/1992, which has been rejected by the State Government by impugned order. Feeling aggrieved, the petitioners have preferred the above Special Civil Application No.4663/1995.

Mr.Patel has appeared for the petitioners. He has submitted that there was sufficient evidence on record to establish that the aforesaid Moti Vagha was cultivating the disputed lands since 1930 and even before that. His presence in the land as a tenant till his death was established. Since his death, the lands were cultivated by his successor Somabhai Vaghabhai. The said Somabhai Vaghabhai was declared to be a protected tenant and after him, his sons the aforesaid Mohanbhai Somabhai and Becharbhai Somabhai were cultivating the said lands. The right to purchase the land under Section 32 of the Tenancy Act has been upheld by the Mamlatdar and ALT in the proceedings under Section 32 of the Tenancy Act. The

price of the land was also determined. The tenants had paid the price of the land and the sale certificate came to be issued in the names of the tenants. The said order has become final. The finding that the Tenant was a lawful tenant, therefore, cannot be challenged. Nor that finding could be upset in the proceedings under challenge. He has submitted that it is not disputed that the lands were the Watan lands subject to the Act of 1958 and the owners were the Watandars. Nevertheless, the lands having been cultivated by the tenants for decades and as the tenants were in possession on the appointed date, the tenants' right to purchase the lands as envisaged by the Tenancy Act was not adversely affected. He has relied upon Section 8 of the Act of 1958 and the judgments of the Hon'ble Supreme Court in the matter of **Pandurang Dnyanoba Lad v/s. Dada Rama Methe and others** [AIR 1976 SC 1910] and of this Court in the matter of **Ranchhod Fakir Halpati v/s. Govanbhai Bhikhabhai and others** [1968 GLR 473]. He has submitted that the provisions contained in the Act of 1958 do not abrogate right of a tenant to purchase the land cultivated by him under the Tenancy Act.

Ms.Nair has appeared for the State and has contested the petitions. She has submitted that to avail of the benefit of Section 8 of the Act of 1958, the tenants were required to be proved to be the lawful tenants in the Watan lands. The onus of such proof would lay on the tenants. In the instant case, the petitioners have failed to prove that they were the lawful tenants in the disputed lands. In support thereof, she has relied upon the judgment of the Bombay High Court in the matter of **Krishna Tatya Chavan and others v/s. Shankar Yamaji Kadam and others** [AIR 1983 Bombay 52].

Mr.Soni has appeared for the Watandar Amthabhai Dalabhai, the respondent no.2. He has contested the petitions and has supported the impugned judgment of the State Government. He has submitted that the order dated 26th November, 1990 made by the District Collector was cryptic and was ex-facie bad and illegal. The District Collector, without considering the evidence on record and the order of remand made earlier, declared that the aforesaid Somabhai Vaghabhai was a lawful tenant in the disputed lands. In the circumstances, the State Government has, by

order dated 3rd December, 1991, rightly set-aside the said order and remanded the matter for decision afresh in light of the observations made by the State Government. The said order has rightly been confirmed by the State Government. He has submitted that all that is directed is an inquiry afresh keeping in view the statutory provisions and the evidence on record. Such an inquiry is necessary in the interest of justice and should not be thwarted.

In the matter of Pandurang Dnyanoba Lad (supra), the Hon'ble Supreme Court had occasion to consider the similar claim made under the Bombay Merged Territories Miscellaneous Alienations Abolition Act. The Hon'ble Court held that, "...**None of the provisions of the Bombay Tenancy Act 1948, particularly the provisions contained in Section 32 of the Act under which tenants became entitled to purchase the lands held by them in that capacity on the tillers' day, is in any way inconsistent with any of the express provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act. Section 32 must therefore govern the rights of the ex-Inamdar and his tenants notwithstanding the**

abolition of the Inams brought about by the Alienations Abolition Act.” Similar is the view expressed by this Court in the matter of Ranchhod Fakir Halpati (supra) in respect of the Bombay Service Inam (Useful to Community) Abolition Act, 1953.

In the matter of Krishna Tatya Chavan and others (supra), the Hon'ble Bombay High Court was called upon to decide an identical issue arising under the Act of 1958. The Hon'ble Court observed that the authorities below had failed to determine as to whether the suit lands were lawfully leased to the respondents and whether such lease was subsisting on the appointed date i.e. 1st May, 1959.

The copies of the Panipatrak and 7/12 forms produced on the record irrefutably prove that the aforesaid Moti Vagha, the predecessor of the petitioners was cultivating the disputed lands since 1930. After his death, the aforesaid Somabhai Vaghabhai continued to cultivate the disputed lands till he passed away in the year 1959. In the order dated 24th August, 1981 made under Section 32G of the Tenancy Act, the Mamlatdar and ALT did record that

the Watandar did not dispute that the said Somabhai Vaghabhai was the tenant in the disputed lands and that he was cultivating the lands on crop-share basis. It has also been recorded that the Watandar did not lay claim for trees, Well or any building or construction. In Tenancy Appeal No.3898/1982 before the Deputy Collector also, the Watandar did agree that the aforesaid Somabhai Vaghabhai was the tenant in the disputed lands. The said findings have become final. In my view, therefore, it is not now open for the Watandar to allege that the aforesaid Somabhai Vaghabhai was not a lawful tenant in the disputed lands or that he was not in possession of the disputed lands on the appointed date.

Section 4 of the Act of 1958 brings about abolition of Inferior Village Watans together with the incidence thereof. Section 5 of the said Act provides, inter alia, for regrant of the Watan lands resumed under Section 4 of the Act of 1958 to the Watandars. Section 8 of the Act of 1958, however, provides for application of the tenancy laws in respect of the Watan lands lawfully leased and such lease subsisting on the appointed date. In the present case, as observed hereinabove, the disputed

lands were cultivated by the predecessors-in-title of the petitioners as tenant; they were cultivating the said lands for decades before the appointed date and also on the appointed date. In view of Section 8 of the Act of 1958 the right of the tenants to purchase the lands in their possession conferred by the Tenancy Act would not be abrogated by the provisions of the Act of 1958. In my view, the aforesaid Mohanbhai Somabhai and Becharbhai Somabhai were rightly held to be the deemed purchasers as envisaged by the Tenancy Act and the disputed lands were rightly sold to the said Mohanbhai Somabhai and Becharbhai Somabhai in compliance with the provisions of the Tenancy Act.

In above view of the matter, the cancellation of the permission for N.A. use by impugned order dated 6th October, 1992 is held to be bad and illegal and inconsequential.

For the aforesaid reasons, both these petitions are allowed. The impugned judgment and order dated 29th April, 1995 passed by the State Government (Deputy Secretary to the Government of Gujarat (Appeals), Revenue Department) is quashed and set-

aside. Rule nisi issued in each petition is made absolute. The parties will bear their own cost.

Registry will maintain copy of this order in each petition.

(Ms. R.M.Doshit, J.)

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